

SENATE CHAMBER,
AUSTIN, Texas, Thursday, June 16, 1870.

Senate met pursuant to adjournment; President Don Campbell presiding. Roll called; quorum present. Prayer by the Chaplain. Journal of yesterday read and approved.

PETITIONS AND MEMORIALS.

By Senator Bowers:

Petition of F. H. Arlett for relief.

Read and referred to Committee on Claims and Accounts.

REPORTS FROM STANDING COMMITTEES.

Report of Committee on Judiciary:

COMMITTEE ROOM,
June 15, 1870.

To the Hon. DON CAMPBELL,

President of Senate:

Your Committee on Judiciary, to whom was referred Senate Bill No. 93, entitled "An Act for the improvement of the navigation of the Colorado river," have had the same under consideration, and instruct me to report it back to the Senate, with accompanying substitute, and recommend its passage.

Respectfully submitted,

M. PRIEST;
Chairman of Committee.

Laid over under the rules.

COMMITTEE ROOM,
June 15, 1870.

To the Hon. DON CAMPBELL,

President of the Senate:

Your Committee on Judiciary, to whom was referred Senate Bill No. 97, entitled "An Act for the relief of W. B. Price, have had the same under consideration, and are equally divided as to the propriety of reporting favorably on the accompanying substitute for the original bill, three members favoring the adoption of said substitute, and three believing the same in conflict with the provisions of the constitution, do not favor its adoption; one member of the committee not being present when said bill was acted on. Your committee

therefore report said bill and proposed substitute back to the Senate, without making any recommendation on the subject.

M. PRIEST,
Chairman of Committee.

Laid over under the rules.

COMMITTEE ROOM,
June 15, 1870.

To the Hon. DON CAMPBELL,

President of the Senate :

Your Committee on Judiciary, to whom was referred Senate Bill No. 76, entitled " An Act to authorize the police court of Washington county to levy a special tax to build a jail at the county seat," have had the same under consideration, and instruct me to report it back to the Senate and recommend its passage.

M. PRIEST,
Chairman of Committee.

Laid over under the rules.

COMMITTEE ROOM,
June 15, 1870.

To the Hon. DON CAMPBELL,

President Senate :

Your Committee on Judiciary, to whom was referred Senate Bill No. 78, entitled " An Act concerning the levy of taxes for Bexar county," have had the same under consideration, and instruct me to report it back and recommend its passage.

M. PRIEST,
Chairman of Committee.

Laid over under the rules.

Report of Committee on Roads, Bridges and Ferries :

COMMITTEE ROOM,
June 16, 1870.

HON. DON CAMPBELL,

President of Senate :

Your Committee on Roads, Bridges and Ferries have given Senate bill No. 200, entitled " An Act to authorize county courts to levy a road tax and to improve roads and bridges," due consideration, and hereby return the same, recommending its passage.

J. G. BELL,
Chairman.

Laid over under the rules.

Reports of Committee on Education :

COMMITTEE ROOM,
Austin, June 14, 1870.

Hon. DON CAMPBELL,

President of the Senate:

Your Committee on Education, to whom was referred the petition of citizens of Lamar county, State of Texas, asking the Legislature to prohibit the sale of spirituous liquors within four miles of Shiloh Male and Female Academy, located six miles west of Paris, the county town of said Lamar county, have had the same under consideration, and report the accompanying bill and recommend its passage.

Respectfully,

E. PETTIT,
Chairman Committee on Education.

Laid over under the rules.

COMMITTEE ROOM,
Austin, June 15, 1870.

Hon. DON CAMPBELL,

President of Senate:

Your Committee on Education, to whom was referred Senate bill No. 30, entitled "An Act to incorporate the Texas Odd Fellows' University and Orphans' Home, Bryan, Brazos county, Texas," have carefully considered the same, and I am instructed to report it back and recommend it do pass.

E. PETTIT,
Chairman.

Laid over under the rules.

BILLS AND RESOLUTIONS.

By Senator Flanagan: "An Act to incorporate the East Texas Cotton, Woolen and Cotton and Oil Manufactory Company."

Read first time and referred to Committee on Judiciary.

Senator Douglas offered the following resolution:

Resolved, That the Secretary of State, or whoever exercises control over the capitol grounds, be requested to cause the north and south gates to be opened at 9 o'clock A. M. of each day (Sundays excepted), and to be kept open during the day.

UNFINISHED BUSINESS.

Unfinished business of yesterday:

The question recurring upon the adoption of the substitute offered by Senator Flanagan for the substitute of Senator Fountain

the chair ruled the substitute of Senator Flanagan out of order. That a substitute for a substitute was out of order, but that the substitute when adopted was open for amendment *in* one degree.

Senator Flanagan appealed from the decision of the chair.

Senator Bowers moved a call of the Senate.

Call sustained.

Roll called.

Absent—Senator Clark.

Senator Fountain moved that Senator Clark be excused.

Senator Bowers moved a call of the Senate on the motion to excuse Senator Clark.

Chair ruled that the Senate being now under a call a further call was not in order.

Senator Clark having returned, Senator Fountain, by permission, withdrew his motion to excuse.

On motion of Senator Bowers the call was suspended.

Yeas and nays demanded on the appeal.

The question was then put by the chair, "Shall the decision of the chair be sustained?"

The yeas and nays were as follows: Yeas 14, nays 14.

Those who voted in the affirmative were:

Baker, Bell, Ford, Fountain, Gaines, Hall, Hertzberg, Mills, Parsons, Pettit, Priest, Rawson, Ruby, Saylor—14.

Those who voted in the negative were:

Alford, Bowers, Broughton, Clark, Cole, Dohoney, Douglas, Evans, Flanagan, Latimer, Pickett, Pridgen, Pyle, Shannon—14.

Message from the House by Chief Clerk Mr. Boyle.

House bill No. 153, "An act appropriating money to pay a claim upon vouchers against the State."

Also House bill No. 2, "An act making an appropriation for the mileage and per diem pay of the members and the per diem of the officers and employes of the twelfth Legislature of the State of Texas."

Also House bill No. 13, "An act to incorporate Big Cypress Bridge Company."

Also enrolled Senate bill No. 81, "An act to legalize an ordinance adopted by the Convention on the twelfth day of December, 1863, authorizing a special tax to be levied for the Waco Tap railroad company, in Falls and McLennan counties," and informed the Senate the Speaker had signed the same.

Whereupon it was signed by the President of the Senate.

The question recurring upon the appeal, the Chair ruled that the appeal from the decision of the Chair was not sustained.

Senator Pickett appealed from that decision.

The Chair ruled the appeal out of order.

The Chair then announced the question before the Senate to be upon the adoption of the substitute offered by Senator Fountain.

Senator Pickett made the point of order—that the substitute was out of order.

Not sustained.

The Chair announced the adoption of the substitute of Senator Fountain to be in order.

The question was then put, "Shall the substitute House bill No. 29, offered by Senator Fountain for Senate bill No. 33; 'An act to provide for the enrollment of the militia, the organization and discipline of the State guards and for the public defense,' be adopted?"

Yeas and nays called for—resulted as follows:

Yeas—Mr. President, Baker, Bell, Ford, Fountain, Gaines, Hall, Hertzberg, Mills, Parsons, Pettit, Priest, Rawson, Ruby, Saylor—15.

Nays—Alford, Bowers, Broughton, Clark, Cole, Dohoney, Douglas, Evans, Flanagan, Latimer, Pickett, Pridgen, Pyle, Shannon—14.

Substitute adopted.

Senator Flanagan offered the following amendment to the substitute for all after the enacting clause.

Substitute for House bill No. 29.]

[By Mr. Flanagan.

AN ACT

TO PROVIDE FOR THE ORGANIZATION OF THE MILITIA OF THE STATE OF TEXAS.

SECTION 1. Be it enacted by the Legislature of the State of Texas, That every able-bodied male inhabitant of this State between the ages of eighteen and forty-five years, shall be liable to perform military duty, except as herein provided, but no person shall be called on to perform military duty who shall not at the time have resided at least twelve months in the State and sixty days within the bounds of the company to which he belongs, except in cases of actual or threatened invasion, in which case he shall perform such duty as may be required of other persons, and shall be subject to like fines and penalties.

SEC. 2. The following named persons shall be exempt from military duty, except in cases of imminent danger, insurrection or invasion: All officers, municipal, county and State, of the State of Texas; all officers of the United States; officers, clerks, directory

and guards of the penitentiary; superintendents, teachers and assistants in the Deaf and Dumb, Blind and Lunatic Asylums; telegraph operators actually engaged as such; presidents, secretaries, and all necessary employes of railroads; mail contractors and mail carriers; public millers; ferrymen on public roads; teachers and professors in schools, colleges and academies; practising physicians; druggists; ministers of the Gospel, and priests of all denominations; provided, that no minister of the Gospel, or priest of any denomination whatever, who accepts a seat in the Legislature as representative, shall, after such acceptance, be allowed to claim exemption from military service by reason of his said profession.

SEC. 3. The militia of the State shall be divided into fifteen divisions and thirty brigades; two regiments shall be formed in each Senatorial district. The first and second Senatorial districts shall form the first division; the third and fourth, the second division; the fifth and sixth, the third division; the seventh and eighth, the fourth division; the ninth and tenth, the fifth division; the eleventh and twelfth, the sixth division; the thirteenth and fourteenth, the seventh division; the fifteenth and sixteenth, the eighth division; the seventeenth and eighteenth, the ninth division; the nineteenth and twentieth, the tenth division; the twenty-first and twenty-second, the eleventh division; the twenty-third and twenty-fourth, the twelfth division; the twenty-fifth and twenty-sixth, the thirteenth division; the twenty-seventh and twenty-eighth, the fourteenth division; the twenty-ninth and thirtieth, the fifteenth division.

SEC. 4. The militia of each district, when the number of persons therein subject to military duty shall be sufficient to constitute two battalions, as hereinafter provided, shall constitute one regiment; but when the number of militiamen in any district shall not be sufficient to constitute two battalions, the militia of such district shall constitute a separate battalion, to be formed into independent companies, as may be found most convenient, and when the number in any district shall exceed the whole number hereinafter required to constitute a full regiment, including any independent companies which may be raised in such county, the same may be divided into two regiments by the brigadier-general commanding the brigade to which such district may belong in such manner as he shall direct; each battalion shall consist of not more than five nor less than three companies, and each company of not more than one hundred nor less than eighty non-commissioned officers and privates; and the regiments and battalions shall be numbered by the commander-in-chief and arranged in numerical order.

SEC. 5. All commissioned officers shall rank according to their

grades and the date of their commissions ; but where officers of the same grade are elected or appointed on the same day, a difference in the date of their commissions shall not determine their rank ; the rank of all the field or general officers of this State, being of the same grade and who are elected or appointed on the same day, under the provisions of this act, for the government and organization of the militia of this State, shall be determined by lot, to be drawn by the adjutant-general in the presence of the Governor and Secretary of State, which duty he is required to perform as soon as practicable, and immediately thereafter to transmit to each officer so drawn the result of such drawing ; and it shall be the duty of the adjutant-general to make an entry in a book kept by him for that purpose of the grade and rank of each officer whose rank is determined as specified in this act.

SEC. 6. The rank of captains and subaltern officers, who may hereafter be elected on the same day, belonging to the same regiment, shall be determined by lot, drawn in the presence of the colonel-commandant ; and the adjutant shall make a record of the grade and rank of each officer whose rank is so determined ; and each regiment shall be commanded by one colonel, and each separate battalion and the first battalion in each regiment by a lieutenant-colonel ; the second battalion in each regiment by one major ; each company by one captain, one first and one second lieutenant, and such non-commissioned officers as are usually appointed to companies in the service of the United States. The major-generals each shall appoint his aid-de-camp, and the Governor shall appoint one aid-de-camp in each major-general's division, with the rank of colonel of cavalry ; the brigadier-generals each his aid-de-camp and brigade-major ; the commanding officer of each regiment and separate battalion his paymaster, judge-advocate, adjutant, quartermaster, sergeant-major and fife-major, and the captains their drummers and fifers.

SEC. 7. The major and brigadier-generals of the State shall be allowed to appoint, in addition to the staff allowed them by this act, such other additional staffs as are allowed to officers of a like grade in the army of the United States.

SEC. 8. The staffs of the major-generals shall rank as colonels of infantry ; the staffs of the brigadier-generals as majors of cavalry ; and the staffs of the colonels commandant as captains of infantry and the said officers, when called into actual service, either by authority of this or the United States, shall be entitled to the same pay and emoluments as officers of the like grade belonging to the United States army.

SEC. 9. The Governor shall, immediately after the passage of

this act, appoint one brigadier-general in each brigade, whose duties shall be to organize the militia, as in section tenth of this act; after such organization shall have taken place, the commissioned officers of each brigade shall proceed to elect the brigadier-general of such brigade, and the person so elected shall be commissioned by the Governor, when the appointment under this section shall cease.

SEC. 10. It shall be the duty of each brigadier-general, so soon as he may be elected and commissioned by the Governor, under the provisions of this act, to proceed without delay to divide his brigade into regiments and battalions, or separate and independent battalions, as the case may be; and said division shall be made as nearly equal and equitable as may be practicable; and it shall be the duty of said brigadier-general to proceed to order or cause elections to be held throughout their respective commands for colonels-commandant, lieutenant-colonels and majors for each regiment or separate battalion; which election shall be made according to law, and returns made thereof to the Governor, who shall commission the said colonels, lieutenant-colonels and majors, as the case may be; and said colonels, lieutenant-colonels and majors shall, after receiving their respective commissions as herein contemplated, cause their respective regiments or battalions to be divided into companies as nearly equal as practicable, and cause elections to be held in each company beat for captain, one first lieutenant and one second lieutenant for each company, and such other officers as are allowed by law in the United States service, giving at least fifteen days' notice of such election, which election shall be held according to law regulating elections for civil officers, and the returns thereof be made to the colonel-commandant or the lieutenant-colonel-commandant of each separate battalion, as the case may be, within ten days thereafter, whose duty it shall be to keep said election returns, and within five days thereafter to make out an abstract of said election returns under his hand and seal, and transmit the same to the Governor by mail, whose duty it shall be to commission all persons elected as aforesaid, and the term of service of all officers elected under the provisions of this act shall be during good behavior, or until promotion, resignation or discharge.

SEC. 11. It shall be the duty of the Governor to issue his proclamation requiring elections to be held in each division, brigade, regiment, battalion and company throughout the State, for all officers contemplated by this act, to be elected on the day set apart by the proclamation, notice of which election shall be published in at least one newspaper in each brigade or division, thirty days previous to said election; which elections shall be held at the same places, con-

ducted in the same manner, and returned in the same way as elections for civil officers, to the Governor of the State, who shall commission the same. All elections to fill vacancies shall be held as follows: for the election to fill a vacancy in the office of major-general, the Governor shall issue his order giving sixty days' notice, which election shall be held at the usual places of holding elections for civil officers, in each and every county composing the division in which such vacancy may occur, and such election shall be held and conducted in the same manner, as hereinafter provided, and to fill a vacancy in the office of a brigadier-general, the major-general shall issue his order, giving thirty days' notice; to fill a vacancy in the office of colonel of a regiment or lieutenant-colonel commanding a separate battalion, the brigadier-general shall issue his order giving thirty days' notice; to fill a vacancy in the office of lieutenant-colonel or major of a battalion, the colonel shall issue his order, giving ten days' notice; and to fill a vacancy in the office of first and second lieutenant, the captain shall issue his order, giving five days' notice thereof.

SEC. 12. No person who shall be elected and commissioned in the Military Department of this State, shall resign the same, until he shall have fully organized the militia under his command, and shall have made full returns thereof of the number of effective men under his command to his superior officer, under the following penalties: if he be a major-general, in the sum of one hundred dollars; if a brigadier-general, in the sum of seventy-five dollars; if a colonel of a regiment, or a lieutenant-colonel of a separate battalion, in the sum of fifty dollars; if a lieutenant-colonel or major of a battalion, in the sum of forty dollars; if a captain, in the sum of thirty dollars; if a first or second lieutenant, in the sum of twenty dollars, to be recovered and appropriated as other fines and penalties are by this act directed.

SEC. 13. In all cases where the militia in any of the military divisions of this State shall fail to elect such officers as they are required to by law, such division shall be attached to and form a part of some other division which shall have the requisite officers, and shall be subject to perform all military duty by this act required, under the command of the officers of the division to which they may be attached. If the delinquency or failure shall occur in a company division, the militia of such division shall be attached to the next adjoining company in the same battalion, if any company of the battalion to which such division belongs, shall have the requisite officers, by order of the lieutenant-colonel or major of such battalion, and if there shall be no company in the battalion organized and officered as required by this act, the militia of each company of

such battalion shall be attached to the most convenient company of the regiment which will be found to have the requisite officers, by an order of the colonel of such regiment; if any regiment or separate battalion shall be found unorganized and without the requisite officers, the militia of such regiment or separate battalion shall be attached to the most convenient regiment or separate battalion in the brigade which shall be found to have the officers and organization required by law, by an order of the brigadier-general of the brigade to which such regiment or battalion may belong. If any brigade shall be found unorganized and without the requisite officers to command the same, the militia of such brigade shall be attached to the most convenient brigade in the division to which such brigade belongs, which shall be found to have the officers required by law, by order of the major-general of such division; and in all cases where the militia of any division shall be attached to any other division, as hereinbefore provided, the militia so attached shall be commanded by the officers of the division to which they shall be attached, and shall be liable to the same duty and subject to the same fines and penalties as if they had previously belonged to such division; and the militia of any division attached to another division shall remain subject to such command until they shall be admitted by an order of their superior officer, to whose command they may be attached, to elect the requisite officers to command such division, and shall have reported to him that they have all the requisite officers for the command of their separate divisions, duly elected and commissioned; after which the command of the officers of the division to which they have been attached shall cease, and shall devolve on the officers of the division elected and commissioned as aforesaid, and if any division shall be found a second time unorganized and without officers, as required by this act, they shall in like manner be again attached to some division having the requisite officers and organization, and shall be debarred the privilege of again separating from the division and command to which they shall be attached, and shall permanently compose a part of said command, anything in this act to the contrary notwithstanding; and the officer whose duty it is made by this act to order militia of any of the divisions to be attached to some other division, as provided for by this act, shall, at the time of issuing said order, give public notice thereof to the militia of the division to be attached as aforesaid; if it be a company, the notice shall be in writing, put up in at least two of the most public places in the company beat; if it be a battalion, the like notice shall be put up in at least one of the most public places of each company of the battalion; if a brigade, regiment or separate battalion, the like notice shall be put up in at least one of the

most public places of the brigade, regiment or separate battalion, or be published for three weeks successively in one or more of the newspapers published in this State, and any notice given as aforesaid shall be deemed in law sufficient, and the militia so notified shall, from the time of issuing such order and giving such notice, be considered and treated as part of the division to which they are attached, anything in this act to the contrary notwithstanding; and any general order issued by the commander-in-chief and major-general, or brigadier-general, and published in any newspaper printed in this State for three weeks successively, shall be deemed in law a sufficient notice thereof to the militia and to all persons to be affected thereby, and shall be to all intents and purposes as valid as if the same were communicated by express or any other manner whatever.

SEC. 14. All elections in the militia department which may hereafter be contested, shall be determined in the following manner, viz: If the election of a major general be contested, the party contesting such election shall furnish the Governor a fair statement of his reasons in writing, upon receipt of which he shall order a court of inquiry, to be held at such place as he may designate, in the division to which such major general belongs, at which court each militia officer of such division, not under the grade of a field officer, shall be entitled to a seat; and if the election of a brigadier general shall at any time be contested, the complainant shall make the like complaint and application to the major general of the division to which such brigade belongs, who is, upon the receipt thereof, required to order a brigade court of inquiry, as in other cases; and when the election of a colonel of a regiment, or lieutenant-colonel commanding a separate battalion, or lieutenant-colonel or major of a regiment shall be contested, complaint and application shall in like manner be made to the next highest officer in command, who upon receipt thereof, shall order a separate regiment court of inquiry accordingly; if under the rank of a field officer, all complaints and applications shall be made to the commanding officer of the regiment or separate battalion where the contest exists; and in order to explain and fix a principle to govern the several courts of inquiry in their duties respecting contested elections, it is hereby declared that the person contesting shall in all cases be bound to furnish satisfactory proof to the court that the person whose election is contested did receive a number of illegal votes, which, if deducted, would give a majority to the person contesting; and if the person contesting fail to establish his charge, or if the charge shall be sufficiently supported, in either the case the court shall report in favor of the

person having the greatest number of legal votes as being duly elected; and the president of each court of inquiry shall certify under his hand the name or names of the person thus duly elected, which certificate, if the officer shall be of the grade of general or field officer, shall be directed and sent to the Governor; if commissioned officers of companies, the certificate shall be signed as aforesaid and be directed and sent to the colonel of the regiment or lieutenant colonel of the separate battalion, and by him to the Governor, who shall issue commissions in either of the above cases. And in order to provide more amply for deciding contested elections, it is hereby declared that when the cause shall arise from any illegal proceedings of any person ordering, conducting or judging said election, on proof thereof being made satisfactory to the court of inquiry, such election shall be declared void, and the President, by and with the authority of the court of inquiry, shall direct the proper officer to issue an order or orders for an election to fill such vacancy, which election, so ordered, shall in all things be conducted in the same way as other elections to fill vacancies in like offices are by this act directed.

SEC. 15. Each and every officer elected and commissioned under the provisions of this act shall, previous to entering upon the execution of the duties of his office, take the following oath:

"I , do solemnly swear (or affirm) that I will faithfully and impartially discharge and perform all duties incumbent on me as , according to the best of my skill and ability, and that I will support the Constitution and laws of the United States and of this State; and I do further swear (or affirm) that since the acceptance of this Constitution by the Congress of the United States, I, being a citizen of this State, have not fought a duel with deadly weapons, or committed an assault upon any one with deadly weapons, or sent or accepted a challenge to fight a duel with deadly weapons, or acted as second in fighting a duel, or knowingly aided or assisted any one thus offending, either within this State or out of it; that I am not disqualified from holding office under the Fourteenth Amendment to the Constitution of the United States (or, as the case may be, my disability to hold office under the Fourteenth Amendment to the Constitution of the United States has been removed by act of Congress), and further, that I am a qualified elector in this State.

I further swear (or affirm) that whenever called upon by any judge of the district court, justice of the peace, or sheriff, to aid in executing the law and arresting offenders, I will obey all orders and directions of such officer, and call to the assistance thereof all the available force within my command, if necessary to the enforcement

of such orders; and I further swear that I will disband the troops so called into active service whenever directed so to do by the civil officer at whose instance they were called out. So help me God."

A copy of which oath shall be endorsed on the back of the commission, signed by the person taking the same, and attested by the officer who administered the oath.

SEC. 16. If any commissioned officer shall move out of the bounds of his division, brigade or regiment, separate battalion or company, or offer himself a candidate for any other military appointment, or shall be absent therefrom otherwise than on military duty, for more than twelve months at one time, his office thereby shall become vacated; and if any commissioned officer shall think himself injured by his superior officer, and shall, upon due application made to him, be refused address, he may complain to the brigadier general, who shall order a brigade court of inquiry to be held under the rules and regulations prescribed by this act; if any inferior officer or private shall think himself injured by his captain or any other superior officer in the regiment or separate battalion to which he belongs, he may complain to the commanding officer of the regiment or separate battalion, who shall order a court of inquiry, and such court shall determine the complaint agreeably to the nature of the case; provided, that the person complaining shall exhibit his charge in writing, supported by oath or affirmation.

SEC. 17. Every captain or commanding officer shall hold at least two company musters between the months of March and November in each year, and shall require the non-commissioned officers of his company, or such of them as he shall designate, to warn his men of the place of muster, in all cases where notice thereof was not given at the previous muster; and each captain shall have the right to designate his muster ground, but shall select some suitable ground as near central as circumstances will permit; and, after the first muster, the company shall select a place of muster, and every officer, non-commissioned officer and private shall appear at his respective muster field by eleven o'clock in the forenoon, and not leave the parade until permitted by the officer commanding the troops; and at every muster each captain or commanding officer of the company shall direct the first sergeant of the company to call the roll, in his presence, between the hours of eleven and twelve o'clock; and the commanding officer of each company shall examine every person belonging to his company, note all the delinquencies, make out an accurate statement of the strength and condition of his company, and make returns thereof to the chief justice of the county and to the commanding officer of the battalion to which he belongs, within twenty days thereafter, whose duty it shall be to return the same to

the commanding officer of his regiment, within ten days thereafter, whose duty it shall be to make out an accurate statement of the condition of his regiment, and return the same to his commanding officer of the brigade to which he may belong, within ten days thereafter; and the commanding officer of a separate battalion shall make a like return to the commanding officer of the brigade to which he belongs, within the same time; and the brigadier general shall make a like return to the major general commanding the division to which his brigade belongs, within twenty days thereafter; and the major general of a division shall make a like return of the division under his command to the adjutant general of the State, within twenty days thereafter; and it shall be the duty of the adjutant general to furnish such blank forms of all the different returns and explanation of the principles on which they should be made, as shall be approved by the commander-in-chief; and also to receive the returns of the militia throughout the State, from all which he shall make the proper abstract, and lay the same before the commander-in-chief of this State within twenty days after they shall have been received by him, or sooner, if required, by the commander-in-chief; and the commander-in-chief, when required, shall lay the same before the Legislature of the State; and the adjutant general shall transmit a duplicate abstract of the number and condition of the militia to the adjutant general's office of the United States annually.

SEC. 18. If any non-commissioned officer, musician, or private, at any muster, shall disobey the proper and legal orders of his superior officer, or act in a disorderly manner, or if by slander at any such muster he shall insult or otherwise molest any officer, non-commissioned officer or private while on parade, or employed in any other service authorized by the laws of this State, the commanding officer may order such person to be arrested and placed under guard for any length of time not exceeding three hours; and the person or persons so offending shall moreover be subject to pay such fines as may be imposed in the manner hereinafter provided.

SEC. 19. In order to compel the observance of the provisions of this act, and for the purpose of introducing a proper degree of subordination and discipline in the operations of the militia of this State, the following penalties shall be incurred and inflicted in the manner hereinafter directed, that is to say: the adjutant-general, for a neglect or violation of those duties imposed on him by this act, shall incur a penalty not exceeding one hundred dollars nor less than fifty dollars; and any commissioned or staff officer, for failing to perform the duties required of him by this act, shall forfeit and pay as follows: commandant of a regiment or separate battalion, the sum of fifty dollars; lieutenant-colonel or major of a battalion,

the sum of fifty dollars; the commanding officer of a company or adjutant, twenty dollars; and those officers respectively shall moreover be liable to be cashiered at the discretion of a court martial. Each non-commissioned officer failing to give notice of any muster, when he shall receive orders for that purpose, without a reasonable excuse, shall be fined in the sum of five dollars, each non-commissioned officer, musician or private failing to attend any muster, or disobeying any order which, by virtue of this act, his superior may give, or failing to repair to the prescribed rendezvous when properly warned so to do, or failing to do his duty when there, or absenting himself without a lawful excuse, shall forfeit and pay such fine as the court martial shall order under the circumstances of the case, not exceeding the sum of five dollars; every non-commissioned officer appointed in pursuance of this act shall serve during good behavior, unless in case of discharge, promotion or resignation.

SEC. 20. It shall be the duty of commanding officers of companies to proceed forthwith to divide the companies into classes by ballot from one to three, for the purpose of a regular routine of duty when called into actual service, and to return a roll of each class and its number in rotation, within thirty days thereafter to the commanding officer of the battalion, who shall transmit the same to the commanding officer of the regiment, who shall cause the same to be recorded by the adjutant, and the commanding officer of the regiment or separate battalion shall make a return of the same to the brigadier general; and those enrolled in the first class shall be subject to perform the first tour of duty, and those in the second class, the second tour of duty, and those of the third class, the third tour of duty, and so on in rotation. When any colonel of a regiment, or a lieutenant-colonel of a separate battalion shall be charged with maladministration or neglect of duty, it shall be lawful for any commissioned officer to exhibit to the brigadier general of the brigade, or such other officer as shall at the time have command of the brigade a fair statement in writing of the charge or charges, and the facts intended to establish the same; and the brigadier general is hereby authorized to order a brigade court martial, to consist of at least seven members, none to be under the grade of field officers, who, when assembled, shall take and subscribe the same oath prescribed for regimental courts martial; and the court being thus sworn shall inquire into the nature and truth of the charge or charges, and if the officer accused shall be found guilty of such neglect of duty, he shall forfeit and pay (if guilty of a misdemeanor in office) any sum not exceeding fifty dollars, and shall be cashiered; and when any lieutenant, captain, lieutenant-colonel of the first, or major of the second battalion of any regiment shall be charged with any misde-

meanor in office or neglect of duty, it shall be lawful for any officer, non-commissioned officer or private to exhibit to the colonel of the regiment, or lieutenant-colonel of a separate battalion, a fair statement of the charge or charges, and the facts intended to establish the same; and the colonel or lieutenant-colonel to whom such complaint is made in writing may, in his discretion, order a regimental or battalion court martial, to consist of at least five commissioned officers, who shall take and subscribe the oath directed to be taken by this act, and when sworn shall inquire into the nature and truth of the charge or charges so exhibited; and if found guilty of a misdemeanor in office, the officer so accused shall be cashiered, and if guilty of neglect of duty shall be fined as prescribed by law, but no sentence of any court martial cashiering any officer shall be final until the same be laid before the commander-in-chief, and by him approved, if the officer cashiered shall pray an appeal from such decision to him, otherwise the same shall be final.

SEC. 21. If any person shall be called on to perform a tour of duty, such person shall be acquitted provided he furnish to his commanding officer an able-bodied substitute in his room or stead; and if any such substitute should be called into actual service in his own term, previous to the expiration of the term for which he shall have enrolled as such substitute, then the person procuring such substitute shall march in his room, or procure another substitute for the remainder of the term, or be liable to the same penalties as if called upon in his own name. Any person called upon to perform a tour of duty as aforesaid, and serving by himself or substitute or otherwise paying such fine as the court martial shall adjudge adequate to the offense, shall not be bound to perform any tour of duty until regularly called upon by rotation.

SEC. 22. Whenever the civil process is resisted in any portion of this State, or the civil authorities are unable to arrest any offender or offenders against the law, it shall be lawful for any judge of the district court, justice of the peace, sheriff or any of his deputies, to call upon the nearest commissioned officer of the militia for a force sufficient to execute the civil process, or arrest any and all offenders against the law. In such case it shall be the duty of the militia officer so called upon immediately to call out a sufficient force under his command to successfully aid the civil authorities in the performance of their duty, and to strictly obey all the orders and directions of the civil officers so calling for such assistance. He shall disband the troops so called out whenever directed by the officer calling for the same; and shall then make full report of all his acts to the adjutant general of the State, giving in such report the name of the civil officer so calling for his assistance, the particular duty he was

called upon to perform, the number of men called out by him, and the length of time they were in active service. Any officer or militiaman who shall wilfully neglect or refuse to perform any duty required herein, shall, for each and every such neglect or refusal, on conviction, suffer the punishment attached to the offense charged against the person so resisting the civil process, or whose arrest is so ordered.

SEC. 23. In case of actual invasion by any foreign power into any portion of this State, or in case of insurrection too formidable for the civil authorities and the local militia force under their control to compete with, it shall be lawful for the Governor, or any officer by him directed, in order to execute the laws of the State, to order into actual service all or any portion of the militia, as the emergency may require, and to discharge such troops as soon as he may judge consistent with the interests of the State.

SEC. 24. Every officer to be tried by a court martial shall have ten days' notice given him of the time and place appointed for the trial, and shall be furnished with a copy of the charges exhibited against him, at least ten days before the sitting of said court. In every court martial for the trial of an officer, not less than two-thirds of the number present shall agree in the judgment or sentence of said court, otherwise the person charged shall be acquitted; and when the members shall be required to give their votes on a question or decision, they shall begin with the youngest in commission; provided, that no commissioned officer shall be allowed to resign his commission while under arrest.

SEC. 25. The captains and subaltern officers of each and every company, or a majority of them, shall, on the muster day next succeeding the muster of each company at which there has been any delinquency or delinquencies, hold a court for the adjustment of fines in each company; and the commanding officer of the company shall issue his warrant, directed to any sheriff or constable in his beat, which warrant shall have the force and effect of an execution; and said constable shall proceed to collect the same, in the same manner as if said execution had issued under and by the authority of any civil officer within the State; and all fines collected by virtue of the provisions contained in this section, shall be paid to the captain of such company within ten days after the same may be collected, and by him applied to the purchase of a drum, fife and colors, and for other purposes for the use of the company.

SEC. 26. When either the major general, brigadier general or brigade major shall be charged with malfeasance in office, if a major general, it shall be lawful for any militia officer, not under the grade of a field officer, to exhibit to the Governor for the time being a fair

statement of the charge or charges, with the facts intended to establish the same, who is hereby authorized to order a general court martial, to consist of at least nine members, none to be chosen under the grade of a field officer, who, when convened, shall take and subscribe the same oath prescribed for regimental court martials; the said courts thus sworn shall have power to inquire into the nature of the offense, and if it shall constitute a misdemeanor in office, he shall be removed from the same; if for neglect of duty, he shall forfeit and pay a sum not to exceed one hundred dollars, at the discretion of the court-martial, to be collected as in similar cases of fines; if a brigadier general or brigade major shall be guilty of either of the aforesaid offenses, the charge shall be submitted to the major general, who shall issue his order to the senior colonel commanding in the brigade in which the person charged resides, by virtue of which order the colonel shall hold a court-martial, and proceed in the same manner as directed for the trial of major general; provided, that in all cases of charges exhibited against officers, the officer ordering a court-martial shall as soon as practicable furnish the person charged with a copy of the charges exhibited against him, and the president of the court-martial shall give at least ten days' notice of the time and place appointed for trial, and cause such witnesses as may be required by either party to be summoned by the adjutant of the regiment in which they reside, and every person so summoned and failing to attend, or refusing to be sworn, shall be tried by the court-martial, and if he be an officer, may be cashiered or fined, at the discretion of the court-martial, not exceeding fifty dollars; if a non-commissioned officer or private, he may be fined not exceeding twenty dollars, and, moreover, be confined under guard or put in jail until he give evidence.

SEC. 27. Each judge advocate, previous to entering on the duties of his appointment, shall take an oath to support the Constitution of the United States and of the State of Texas, and that he will well and truly perform the duties of judge advocate according to law and the best of his skill and ability, which oath shall be in writing, signed by the judge advocate, and attested by the officer who administered the same; the judge advocate thus sworn shall administer the following oath to the officers, previous to their entering on the duties of any court-martial, viz: "You and each of you do solemnly swear that you will well and truly inquire into the delinquencies which may appear on returns to be laid before you, and will assess the fines thereon as may seem just, according to law, without favor or affection, partiality or prejudice, and that you will not disclose or discover the vote or opinion of any particular member of this court, unless required to give evidence thereof in a court of justice. So help you

God." It shall be the duty of the judge-advocate to provide a book, in which he shall record the proceedings of the court-martial, and all other necessary entries for the regiment or separate battalion, which are or shall be required by law, and for his services shall be exempt from military duty and be allowed the sum of two dollars per day for attending regimental or battalion courts-martial, which it shall be his duty to attend, to be paid out of the fines arising under this act. If, from any cause, a judge advocate shall fail to attend a court-martial, as provided in this act, it shall be the duty of the officers present to appoint a judge advocate for the time being; and in case of his death, resignation or removal out of the county or from his office, the journals and proceedings shall be kept by the colonel or commanding officer until a judge advocate shall be appointed in his stead.

SEC. 28. All fines and forfeitures imposed by a regimental or battalion court martial, shall be collected in like manner as fines and penalties are required to be collected by company courts martial, and paid into the hands of each paymaster of such regiment or separate battalion. It shall be the duty of the commanding officer of the regiment or separate battalion to appropriate the money arising from fines, in the hands of the paymaster, by order of the court martial, in the first place, to the purchasing of fifes, drums and colors, for the use of the regiment or separate battalion, and secondly, to pay the officers of the regiment or separate battalion for any service for which they may be entitled to pay under the provisions of this act.

SEC. 29. No officer or private, ordered or directed by this act to appear as aforesaid, shall be liable to be taken or arrested by any officer in any civil action or process whatsoever on the day such person is directed to appear, or in any reasonable time in going to, continuing at, or returning from the same; and every such arrest is hereby declared void, and shall subject such officer to damages for false imprisonment; and every person required by this act to attend muster, going to and returning from the same, shall be suffered to pass over any bridge, together with his horse, and shall be put over any public ferry without delay, free of charge; and if any ferryman demand pay for, delay or refuse to put such person or persons over, or keeper of toll bridge impede the passing of any person, he shall forfeit and pay for every such offense the sum of ten dollars, to be recovered by warrant from a justice of the peace, one-half to go to the informer and the other half to be paid into the regimental fund of the regiment to which the impeded person belongs.

SEC. 30. The colonel of each regiment may constitute two companies thereof light infantry companies, as right and left flank companies, which companies shall be armed and equipped the same as

like companies in the United States service; and all corps shall use for instruction and exercise the system of military tactics and discipline adopted in the United States army for troops of a similar description; and all companies shall have a right to change their uniform from time to time, provided such change shall not be incompatible with the military regulations of the United States army.

SEC. 31. Every commissioned officer, volunteer or militia, shall, when he goes out of office, deliver to his successor in office all books and forms furnished him by the State, or received from his predecessor in office, and also all books and papers in his possession belonging to his division, brigade, regiment, battalion or company; and every officer who shall neglect or refuse so to do, after a demand thereof has been made by his successor, shall be fined twenty dollars a month for every month he shall so neglect or refuse after such demand, to be assessed by any court martial having cognizance of the conduct of such officer, and collected and accounted for as other fines imposed upon such officer are by this act directed to be collected and accounted for.

SEC. 32. The Governor shall appoint one adjutant-general, with the rank of colonel of cavalry, who shall do and perform all the duties of adjutant-general, as required of him by this act, and shall furnish all forms of returns, and keep a book, in which he shall make a fair entry of all returns by him received, which shall be subject to the inspection of the major-general and commander-in-chief, and shall receive for his services the sum of five hundred dollars per annum, out of any money in the treasury not otherwise appropriated.

SEC. 33. The system of discipline and exercise which shall be ordered to be observed by the regular army of the United States, shall be observed by the militia of this State, and the commanding officers of the several militia divisions shall cause the militia within their respective commands to be disciplined and trained conformably thereto, in all things not otherwise directed by this act; and in all cases not specially provided for by this act, such provisions of law as have been or may be made by Congress for the government and direction of the army or the militia of the United States in similar cases, shall be binding upon and be observed and conformed to by the militia of this State; and the forms and rules of proceeding of all courts martial, not provided for in this act, shall be such as are established by the rules and articles of war adopted and used in the militia service of the United States.

SEC. 34. Each new county established by this Legislature shall form a part of the same brigade and division as the county from which such new county, or the greater portion thereof was taken.

SEC. 35. The adjutant general shall also be quartermaster gene-

ral, and his duty as such shall be to collect and take charge of all public property belonging to the military of this State, or for military uses, which has not been regularly issued by the State; and his general duties shall be similar to the duties of quartermaster general and commissary general of the United States; and, in addition to said duties, he shall perform the duties of ordnance officer. He shall give a bond with two or more sufficient securities, to be approved by the Governor, payable to the State of Texas, conditioned for the faithful performance of the duties of adjutant general, quartermaster general, and such other duties as devolve upon him by the laws of this State.

SEC. 36 The commander-in-chief may appoint an aid-de-camp, who shall also be his acting assistant adjutant general, and shall rank as brevet brigadier general.

SEC. 37. Volunteer companies shall form a part of and be attached to the regiments of the same corps within their brigades, and shall turn out and perform duty with the same upon all battalion, regimental, brigade and division drills or parades, and the commanding officer may assign them as flank companies to the battalion, regiment, brigade or division, as he may deem proper. There shall be battalion, regimental, brigade or division drill and parade, once at least in every twelve months. The commander-in-chief may order such parades, drills or inspections as he may deem proper; provided, however, that not more than one such shall take place in the same year in the same division.

SEC. 38. All the returns required of the militia shall also be required of volunteer or any militia companies of the State, and to be made by the proper officers through the same channel.

SEC. 39. The sum of five hundred dollars is hereby appropriated out of any unappropriated funds in the treasury, for the purpose of purchasing forms, books, etc., necessary to carry this act into effect.

On motion of Senator Parsons the Senate took a recess for thirty minutes.

IN SENATE, 12.10 P. M.

Amendment offered by Senator Flanagan read.

Senator Flanagan moved to adjourn.

Yeas and nays called for. Result as follows:

Yeas—Alford, Bell, Broughton, Clark, Cole, Dohoney, Douglas, Evans, Flanagan, Latimer, Mills, Pickett, Pridgen, Pyle, Shannon—15.

Nays—Baker, Ford, Fountain, Gaines, Hall, Hertzberg, Parsons, Pettit, Priest, Rawson, Ruby, Saylor—12.

Senate adjourned.